

## **REMARKS**

### **Background**

The present Amendment is submitted to address the Examiner's rejections that were raised in the pending Office Action. Reconsideration and allowance for the above-identified application are now respectfully requested.

Claims 13-19, 21, and 22 have been previously withdrawn. Claims 1-12, 20, and 23-29 are pending for consideration. Claims 1, 5-8, 20, and 23-29 are amended herein in accordance with the Examiner's suggestion to clarify Applicants' position that the powdered Luo Han Guo utilized in the presently claims invention is a crude, "unrefined" form and to emphasize that the liquid Luo Han Guo is a "refined" form. Applicants contend that unrefined powdered Luo Han Guo has properties that are separate and distinct from the refined liquid form. Support for these amendments can be found, for example, in paragraph [0027] of the Application, wherein preparation of the powder from, whole, dried fruit is discussed. The preparation and use of the powdered form as distinct from the preparation and use of the liquid form is further discussed in paragraph [0032] of the Application.

Based on the amendments and remarks presented herein, Applicants believe that the claims are in position for immediate allowance.

### **Rejections Under 35 U.S.C. § 103**

The Office Action has rejected claims 1-12, 20, and 23-29 under 35 U.S.C. § 103(b) as being unpatentable over Su et al. (U.S. Appl. No. 2002/0068102) in view of Fischer et al. (U.S. Pat. No. 5,433,965) or Downton et al. (U.S. Pat. No. 5,411,755) or over Yegorova et al. (U.S. 6,387,370) in view of Fischer et al. (U.S. 5,433,965) or Downton et al. (U.S. 5,411,755).

Applicants respectfully propose that the cited references do not render the present claims, as amended, obvious under the standards of 35 U.S.C. § 103(b) because the references fail to teach or suggest a dietary supplement that includes noni juice and a powder made from dried, unrefined Luo Han Guo, and the cited references fail to teach or suggest a method for masking the unpleasant flavor of noni by combining noni juice with unrefined, powdered Luo Han Guo extract. Moreover, the cited references neither teach nor suggest a dietary supplement that combines noni and unrefined powdered Luo Han Guo in the weight ranges recited in the claims. In fact, the cited references neither teach nor suggest the inclusion of unrefined powdered Luo Han Guo in any specific composition, and the cited references include no weight ranges for the

use of unrefined powdered Luo Han Guo.

Applicants also respectfully propose that the cited references do not render the present claims obvious under the standards of 35 U.S.C. § 103(b) because the references teach away from the presently claimed invention. In particular, both Fischer and Downton teach away from the use of powders made from unrefined Luo Han Guo (e.g., "consumption of the fruit [i.e., unrefined Luo Han Guo] in large quantities is limited, due to the intense sweetness, and unattractive vegetable flavor." Fischer, col. 1, lines 63-65). Applicants have discussed these points in detail in previous Amendments (see, e.g., Amendment "E" filed 3 April 2008) and, in the interest of brevity, they will not be presented again herein.

In addition, as the Examiner is aware, it is well established in patent law that in order to support a *prima facie* case of obviousness, a person of ordinary skill in the art must find both the suggestion of the claimed invention, and a reasonable expectation of success in making that invention, solely in light of the teachings of the prior art. *In re Dow Chemical Co.*, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988). Applicants respectfully suggest that a person having ordinary skill in the art would not have a reasonable expectation of making the presently claimed invention based on the cited references because the references fail to teach each and every limitation of the claims. For example, the Office Action alleges that Su teaches the use of "flavorings" in combination with Noni (Office Action, pg. 4). However, there are myriad flavoring and flavor masking compounds that can be used in foods and Su, either alone or in combination with the other cited references, makes no specific suggestion for what flavorings or flavor maskers may be able to mask the unpleasant flavor and smell of noni. As such, Applicants respectfully suggest that a person having ordinary skill in the art would have no way of knowing, based on what is taught or suggested in the cited references, that unrefined Luo Han Guo powder could be used to mask the unpleasant flavor and/or smell of noni. Moreover, a person having ordinary skill in the art would not have a reasonable expectation of making the presently claimed invention based on the cited references because the references teach away from the use of powdered Luo Han Guo by repeatedly criticizing, discrediting, or otherwise discouraging the use of and/or the properties of powdered Luo Han Guo. See, MPEP § 2141.02 VI (citing *In re Fulton*, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004)).

### **Conclusion**

Based on the foregoing amendments and remarks, Applicants respectfully request reconsideration of the application and allowance of presently pending claims.

In the event the Examiner finds any remaining impediment to the prompt allowance of this application which could be clarified by a telephone interview, the Examiner is respectfully requested to contact the undersigned attorney.

Dated this 22<sup>nd</sup> day of October, 2008.

Respectfully submitted,

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